Supreme Court, U.S.
FILED
JUL 31 1997
CLERK

(2)

No. 97-17

In The

Supreme Court of the United States

October Term, 1996

MICHAEL T. HALL, TRUSTEE and MICHAEL T. HALL,

Petitioners,

v.

FEDERAL FINANCIAL CO.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

JOHN E. RINALDI
Counsel of Record
SEAN P. MCMULLIN
WALSH, COLUCCI, STACKHOUSE, EMRICH, & LUBELEY, P.C.
13663 Office Place
Suite 201
Woodbridge, Va. 22192
(703) 680-4664
Counsel for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

11pp

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF FACTS AND OF THE CASE 1

REASONS TO DENY THE WRIT 1

I. THE FOURTH CIRCUIT PROPERLY APPLIED THE LAW OF VIRGINIA 2

II. PETITIONER SEEKS REVIEW OF AN ISSUE THAT THE COURT HAS PREVIOUSLY REFUSED TO REVIEW 6

CONCLUSION 7

TABLE OF AUTHORITIES

Page

CASES CITED

Atherton v. F.D.I.C., 519 U.S. ___, 117 S. Ct. 666, 136 L.Ed.2d 656 (1997) 4

Cadle Co. II v. Lewis, 254 Kan. 158, 864 P.2d 718 (1993), *cert. denied*, 511 U.S. 1053, 114 S. Ct. 1613, 128 L.Ed.2d 340 (1994) 2, 4, 6

Cadle Co. II v. Stamm, 633 So. 2d 45 (Fla. Dist. Ct. App. 1st Dist. 1994) 4

Central States Resource Corp. v. First National Bank, 243 Neb. 538, 501 N.W.2d 271 (1993) 4

F.D.I.C. v. Bledsoe, 989 F.2d 805 (5th Cir. 1993) 6

Investment Co. of the Southwest v. Reese, 117 N.M. 655, 875 P.2d 1086 (1994) 4

Jackson v. Thweatt, 883 S.W.2d 171 (Tex. 1994) 4

Martin v. Pioneer Title Co. of Vada County, 1993 WL 381101 (Idaho Ct. App. 1993) 4

Michigan v. Long, 463 U.S. 1032, 103 S. Ct. 3469, 77 L.Ed.2d 1201 (1983) 5, 6

National Bank and Trust Company at Charlottesville v. Castle, 196 Va. 686, 85 S.E.2d 228 (1955) 6

N.S.Q. Assoc. v. Beychok, 659 So. 2d 729 (La. 1995) 4

O'Melveny & Meyers v. F.D.I.C., 512 U.S. 79, 114 S. Ct. 2048, 172 L.Ed.2d 67 (1994) 4

Professional Collection Consultants v. Hanada, 53 Cal. App. 4th 1016, 62 Cal. Rptr. 2d 182 (1997) 4

Tivoli Ventures v. Bumann, 870 P.2d 1244 (Colo. 1994) 4

TABLE OF AUTHORITIES – Continued

Page

Twenty First Century Recovery, Ltd. v. Mase, 279 Ill. App.3d 660, 665 N.E. 2d 573 (1996) 4

Union Recovery Ltd. Partnership v. Horton, 252 Va. 418, 477 S.E.2d 521 (1996) 3, 4, 5, 6

STATUTES CITED

Sup. Ct. R. 10 1

Sup. Ct. R. 14(g)(ii) 1

12 U.S.C. § 1821(d)(14)(A) and (B) (1997).....3, 6

28 U.S.C. § 1332 (1997) 1

RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, Federal Financial Co., an Illinois general partnership ("FFC") respectfully requests that the Court deny the Petition of the defendants, Michael T. Hall and Michael T. Hall, Trustee ("Petitioners"), seeking review of an Opinion of the United States Court of Appeals for the Fourth Circuit.

STATEMENT OF FACTS AND OF THE CASE

FFC notes the following inaccuracies and omissions from the Petitioner's statement of the case. The Petitioner fails to note that the basis for federal jurisdiction over this matter in the first place is diversity of citizenship under 28 U.S.C. § 1332 (1997), as required by United States Supreme Court Rule 14(g)(ii). Petitioner also provides a negative characterization of the decision of the Fourth Circuit in its Statement of the Case. *Petitioner's Brief* at p.4. FFC asserts that the decision of the Fourth Circuit speaks for itself.

REASONS TO DENY THE WRIT

Review on a Writ of Certiorari is not a matter of right, but of judicial discretion, and a Writ of Certiorari is granted only for compelling reasons. Sup. Ct. R. 10. Rule 10 gives examples of some of the general considerations to be made by the Court in deciding whether or not to grant a writ, such as whether a United States court of

appeals has entered a decision in conflict with the decision of another United States court of appeals on the same matter, or with a decision of a state court of last resort on an important federal issue. *Id.* The Petitioner has not presented any compelling reason to grant the writ. The Fourth Circuit properly applied the stated law of Virginia in rendering its decision. The decision of the Fourth Circuit in this matter does not conflict with any other federal or state court decisions on the same issue or with any ruling of this Court. It appears that the Petitioner seeks to overturn the established law of Virginia and ten other states on an issue that the Court has previously refused to review. *See Cadle Co. II v. Lewis*, 254 Kan. 158, 864 P.2d 718 (1993), *cert. denied*, 511 U.S. 1053, 114 S. Ct. 1613, 128 L.Ed.2d 340 (1994).

I. THE FOURTH CIRCUIT PROPERLY APPLIED THE LAW OF VIRGINIA.

Both the U.S. District Court for the Eastern District of Virginia and the Fourth Circuit Court of Appeals were sitting with diversity of citizenship as the basis for jurisdiction. The courts therefore applied the substantive state law of Virginia, the jurisdiction in which the district court was located and in which the promissory note at issue was to be performed. The state law at issue is the application of the relevant statute of limitations to FFC's action to collect on the promissory note. Because the original noteholder was placed in receivership, and the Resolution Trust Corporation ("RTC") appointed as receiver, the Financial Institutions Reform and Recovery Act ("FIRREA") applied, including its statute of limitations. 12

U.S.C. § 1821(d)(14)(A) and (B) (1997). There is no dispute as to the interpretation of that federal statute.

The RTC is given six years from the date of receivership to bring its action. *Id.* The Petitioner does not dispute that had the RTC retained the note in question, it could have brought an action within the time set forth in FIRREA. The dispute arises out of the application of this limitations period to FFC, as assignee of the RTC. Because FIRREA is silent as to the application of its limitations period to assignees, there is no need for further interpretation of the federal statute. Rather, the Fourth Circuit properly looked to and applied the Virginia law of assignments, which was recently announced in *Union Recovery Ltd. Partnership v. Horton*, 252 Va. 418, 477 S.E. 2d 521 (1996). Virginia clearly applies the six-year statute of limitations to assignees of the RTC.

Petitioner's main argument is not a direct attack on the decision of the Fourth Circuit. Petitioner contends that the Fourth Circuit erred in relying on a decision of the Virginia Supreme Court because the state court construed a federal statute incorrectly. *Petitioner's Brief* at p. 4. In effect, Petitioner's argument is an attack directed at the decision of the Virginia Supreme Court set forth in *Union Recovery*. The decision in *Union Recovery* is in agreement with decisions in several other states. Therefore, Petitioner's argument is also an attack on the established law of Kansas, Florida, Nebraska, New Mexico,

Texas, Idaho, Louisiana, California, Illinois, and Colorado.[1]

The Petitioner does not contend that the Fourth Circuit erred by applying state law standards as required by the rule set forth in *O'Melveny & Meyers v. F.D.I.C.*, 512 U.S. 79, 114 S. Ct. 2048, 172 L.Ed.2d 67 (1994) and in *Atherton v. F.D.I.C.*, 519 U.S. ___, 117 S. Ct. 666, 136 L.Ed.2d 656 (1997). The Fourth Circuit applied state law because there was no "specific showing that the use of state law will create a significant conflict with, or threat to, some federal policy or interest." *Atherton*, 117 S. Ct. at 667. The Petitioner argues that the Fourth Circuit should not have followed the state law established by *Union Recovery* because the Virginia Supreme Court incorrectly interpreted FIRREA as extending the six year statute of limitations to assignees of the RTC. However, the Virginia Supreme Court did not interpret FIRREA to reach its conclusion. –

Petitioner's argument misses the mark. Although the Virginia Supreme Court's decision involved the statute of

---

[1] See *Cadle Co. II v. Lewis*, 254 Kan. 158, 864 P.2d 718 (1993), *cert. denied* 511 U.S. 1053, 114 S. Ct. 1613, 128 L.Ed.2d 340 (1994); *Cadle Co. II v. Stamm*, 633 So. 2d 45 (Fla. Dist. Ct. App. 1st Dist. 1994); *Central States Resource Corp. v. First National Bank*, 243 Neb. 538, 501 N.W.2d 271 (1993); *Investment Co. of the Southwest v. Reese*, 117 N.M. 655, 875 P.2d 1086 (1994); *Jackson v. Thweatt*, 883 S.W.2d 171 (Tex. 1994); *Martin v. Pioneer Title Co. of Vada County*, 1993 WL 381101 (Idaho Ct. App. 1993); *N.S.Q. Assoc. v. Beychok*, 659 So. 2d 729 (La. 1995); *Professional Collection Consultants v. Hanada*, 53 Cal. App. 4th 1016, 62 Cal. Rptr. 2d 182 (1997); *Twenty First Century Recovery, Ltd. v. Mase*, 279 Ill. App.3d 660, 665 N.E. 2d 573 (1996); *Tivoli Ventures v. Bumann*, 870 P.2d 1244 (Colo. 1994).

limitations provisions found in FIRREA, the Petitioner's disagreement with the *Union Recovery* decision is not with the application of that statute. The Virginia Supreme Court correctly read and applied the statute to provide the RTC with a six-year limitation period. *Union Recovery*, 252 Va. at 422. The Virginia Supreme Court's application of FIRREA ended there. In the absence of a specific provision related to assignees of the RTC, the Virginia Supreme Court then applied the long standing Virginia law of assignments to decide whether an assignee of the RTC is also entitled to the six-year limitation period. Union Recovery was the assignee of an entity that could have enforced an instrument within a set amount of time. FIRREA set forth the limitation period. Under established Virginia law, as an assignee of that entity, Union Recovery stepped into the shoes of its assignor. The Virginia Supreme Court thus decided that, in Virginia, the state courts should apply this well-settled Virginia principle to the application of FIRREA's limitation period. *Union Recovery*, 252 Va. at 423. The same facts were before the Fourth Circuit in this matter, and the Fourth Circuit properly followed Virginia law in rendering its decision.

The Court should not undertake review of a state court decision if that decision is based on adequate and separate state grounds and contains a "plain statement" to that effect. *Michigan v. Long*, 463 U.S. 1032, 1041, 103 S. Ct. 3469, 3476, 77 L.Ed.2d 1201, 1214 (1983). The Virginia Supreme Court plainly states in *Union Recovery* that its decision is based on Virginia law.

> It is well established law in Virginia that an assignee obtains his rights from the assignor, and, thus, he is said to 'stand in the shoes' of the

> assignor when pursuing an action on the contract or instrument assigned.

Union Recovery, 252 Va. at 423, *citing*, *National Bank and Trust Company at Charlottesville, v. Castle*, 196 Va. 686, 692-93, 85 S.E.2d 228, 232 (1955).

Furthermore, the Virginia Supreme Court states that the Virginia law of assignments mandates the application of the longer limitations period to assignees of the RTC without reference to the public policy considerations set forth in the other decisions that rely on the holding in *F.D.I.C. v. Bledsoe*, 989 F.2d 805 (5th Cir. 1993). *Union Recovery*, 252 Va. at 424. The Virginia Supreme Court clearly and properly applied the Virginia law of assignments in reaching its decision. There is no need for the Court to render what would amount to an advisory opinion on the issue. *Michigan v. Long*, 463 U.S. at 1042.

II. PETITIONER SEEKS REVIEW OF AN ISSUE THAT THE COURT HAS PREVIOUSLY REFUSED TO REVIEW.

The Petitioner's second argument is that the "plain meaning" of 12 U.S.C. § 1821(d)(14)(A) and (B) mandates that the extended limitations period does not apply to assignees of the RTC. This is an argument that has failed before every appellate level court considering the issue. Furthermore, it is an argument that has been presented to the Court and denied in the past. *See Cadle Co. II v. Lewis*, 254 Kan. 158, 864 P.2d 718 (1993), *cert. denied* 511 U.S. 1053, 114 S. Ct. 1613, 128 L.Ed.2d 340 (1994). Since certiorari was denied in *Cadle Co. II v. Lewis*, there has been

no change in either FIRREA or otherwise in the status of the law that would merit review of this issue now.

CONCLUSION

The Fourth Circuit properly applied the law of Virginia in making its decision. The Supreme Court of Virginia properly applied the law of assignments in Virginia in making its decision on which the Fourth Circuit decision was based. The Court has previously denied certiorari on the issue presented and there has been no change in the status of the law that would merit review of the issue at this time.

The Respondent, Federal Financial Co., respectfully requests that the Court deny a Writ of Certiorari and to grant the Respondents its taxable court costs.

Respectfully Submitted,

JOHN E. RINALDI
SEAN P. MCMULLEN
Counsel for Respondents
WALSH, COLUCCI, STACKHOUSE,
EMRICH, & LUBELEY, P.C.
13663 Office Place
Suite 201
Woodbridge, Va. 22192